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by

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**Criminal Background Screening in Affordable Housing Units in Austin,
Texas**

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Texas**

by

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Report

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Abstract

Criminal Background Screening in Affordable Housing Units in Austin, Texas

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The University of Texas at Austin, 2016

Supervisor: Elizabeth Mueller

Since the 1970s the number of individuals with involvement in the criminal justice system has increased rapidly. Here in Texas, this number is alarmingly high. With over 5,000 individuals being released from correctional facilities in Travis County alone in 2007, this issue is very relevant to the Austin community.

Current happenings in the city revolving around a ‘Ban the Box’ policy for employment have begun a momentum to look at the necessity of criminal background screenings to judge an applicant’s ability to be a good employee. This along with Austin Mayor Steve Adler’s recent 2015 proposition to effectively end veteran homelessness, have set the stage to create programs to aid people with criminal records obtain housing.

Obtaining housing is increasingly difficult in Austin not only for people with criminal records. The price of housing has increased dramatically for both renters and owners making housing unaffordable for much of the population. This trend, coupled with criminal background screening practices, makes finding housing very difficult for many individuals.

The city has multiple programs in place to incentivize the development of affordable housing through density bonuses and expedited reviews. These programs have led to a large number of affordable units scattered throughout the city; however, these units, like many across Austin, often have criminal background screenings practices that are overly broad and make housing unattainable for many individuals.

A number of organizations across the country have created a series of best practices for criminal background screening that deconstruct stigmas regarding applicants with criminal backgrounds. If these practices were to be applied in Austin, especially to the current stock of affordable housing, it would create more opportunity and choice for applicants across the city to find housing.

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Chapter 1: Introduction

International human rights law and policy here in the United States emphasize the importance of housing for survival and dignity. In the United States, there are many things working against individuals' ability to obtain housing. Lack of affordability in housing stock, especially in rapidly growing cities like Austin, has created an increased need for governmental support in providing units that are affordable to a wider range of the population. However, many of these units are still unattainable to individuals living in these communities. Those with involvement in the criminal justice system have an overwhelmingly difficult time obtaining this housing. Since the 1970s, harsh sentencing laws have increased the number of individuals with a history of criminal justice involvement. Housing policies based on misinformation and inherent prejudices exacerbate these problems.

This professional report is being done in partnership with Austin/Travis County Reentry Roundtable, a collaborative organization focused on effective reentry and reintegration of formerly incarcerated individuals. Previous work by this organization in housing has focused on perceived needs and barriers by formerly incarcerated individuals. In a 2011 survey of 124 individuals who would be released within 90 days from the Travis County Unit of the Texas Department of Criminal Justice and Travis County Correctional Complex (Del Valle) who are returning to Travis County, 73%

perceived a felony conviction to be the greatest barrier to finding housing.¹ This finding reinforces data on the national level that points to overbroad and arbitrary housing policies which deny people with criminal backgrounds from obtaining housing.²

Another component of the Reentry Roundtable's work is to review housing across Austin and identify true barriers to obtaining subsidized housing by people with criminal backgrounds. For the purposes of my Professional Report, I will be looking at housing providers which receive city funds or incentives and in turn provide affordable housing units. The purpose of this report is to identify current criminal background screening at these properties and compare this to best practices as outlined by national organizations and practices of other localities. I will recommend a series of changes that can be made based on these national best practices and current screening processes being done in affordable housing units in Austin.

THE PROBLEM

In Austin, Texas housing prices have increased dramatically in recent years. From 1992 to 2012 housing prices tripled in the Austin MLS.³ A number of programs to leverage private development and create affordable housing units by providing density bonuses or expedited reviews have been created; however, most of these subsidized units use criminal background screening which deny housing based on outdated practices. This

¹ *Housing Needs and Barriers for Formerly Incarcerated Persons Travis County*. Rep. Austin Travis County Reentry Roundtable, 16 July 2008. Web. 15 Dec. 2016.

² *No Second Chance: People with Criminal Records Denied Access to Public Housing*. Rep. Human Rights Watch, 2004. Web. 19 Jan. 2016.

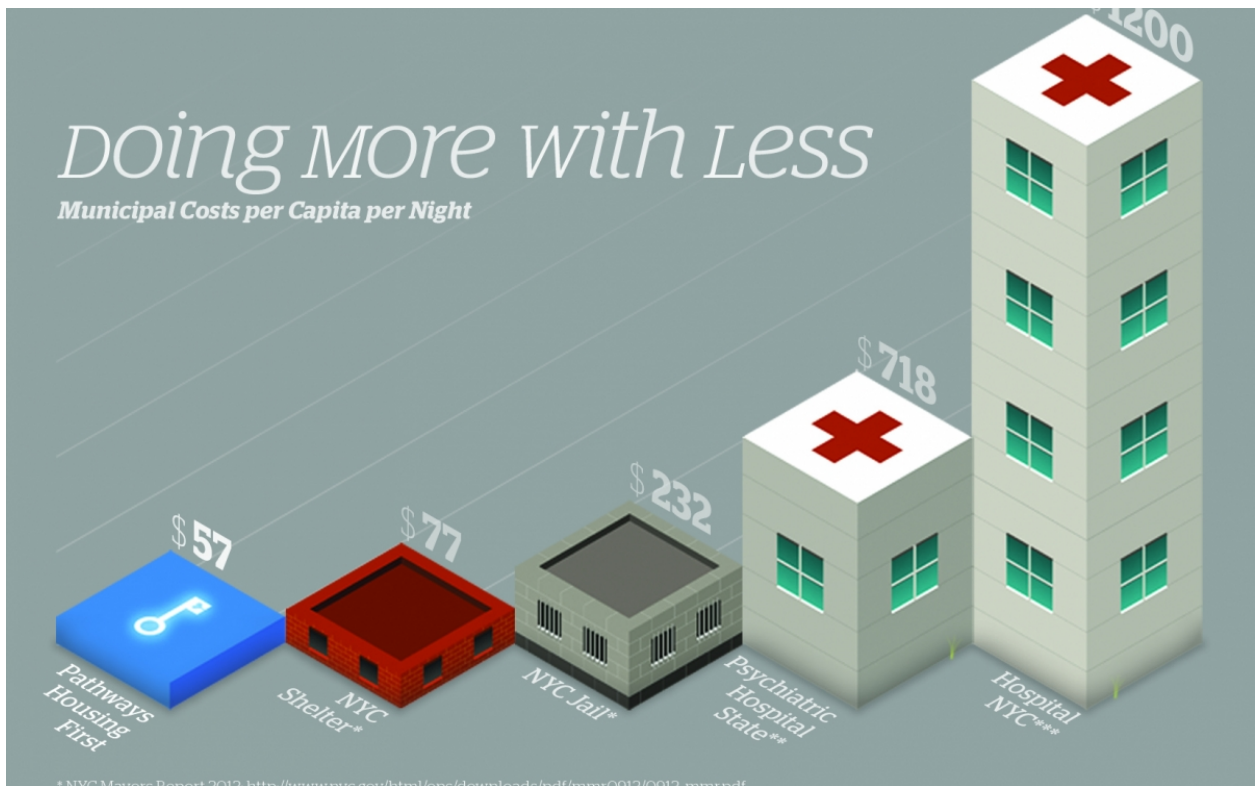
³ "Housing Activity and Affordability." *Real Estate Center*. Texas A&M University, 2015. Web. 15 Feb. 2016.

document will review best practices in criminal background screening, how these practices compare to those currently being performed across the city of Austin by affordable housing providers, and any recommendations to help integrate these policies.

Individuals with criminal backgrounds fall into two overarching groups. The first group consists of individuals who have high needs and more barriers. These individuals may have recently been released from jail or prison or are currently homeless and are in immediate need of housing. A lack of housing makes it more difficult to find employment, as well as to resist past lifestyles that may include criminal activity. To help this group, many organizations and municipalities have adopted a Housing First approach, where the goal is to find housing for individuals before addressing other needs.⁴ This approach has had high outcomes of success for housing retention among individuals who were not successful at maintaining housing in other programs.⁵ By focusing on the immediate need of housing, municipalities reduce future costs associated with criminal justice, shelters, and emergency room visits as seen in Figure 1.1.

⁴ "Housing First – Community Wide Definition." *ECHO RSS*. Web. 18 Mar. 2016.

⁵ "Housing First Model." *Pathways to Housing*. Web. 18 Mar. 2016.



Municipal costs per night per night of Housing First model verses alternatives in New York City in 2012.⁶

Figure 1.1: Housing First Costs

The second group consists of individuals who have reduced barriers but whose criminal history has followed them for many years, making it difficult to secure housing. These individuals may have jobs and have integrated back into society, but their criminal history continues to bar them from finding proper housing.

The amount of time that a housing provider screens for criminal history is known as a “look back” period. Vincent Harding, Chair of the Travis County Democratic Party, has said that such long-term look back periods in employment create “a lifetime sentence

⁶ "Housing First Model." *Pathways to Housing*. Web. 18 Mar. 2016.

of second-class citizenship.”⁷ This is true for housing as well; inability to gain housing long after rehabilitation continues to be a burden. This group is most often plagued by extensive look back periods and policies of housing providers that limit people based on criminal record, regardless of their conviction.

Both of these groups of individuals are facing significant barriers to being housed that would make it easier to fully reentering society. Current work being done on both issues. Nationally, HUD has developed a set of regulations regarding look back periods and second chances, which will be discussed in Chapter 2. In Austin, the Ending Community Homelessness Coalition (ECHO) and partners have worked to reduce barriers and create Housing First opportunities across the city. These programs will be considered throughout this report and then compared to current practices in Austin.

⁷ Kamp, Amy. "Austin First Fair Chance City in the South: Ban the Box Ordinance Passes the Council." *The Austin Chronicle*. 25 Mar. 2016. Web. 28 Mar. 2016.

Chapter 2: Federal Policies and Best Practices

Nationally, the number of individuals involved with the criminal justice system has increased dramatically since “tough on crime” sentencing policies were implemented in the 1970s. Combined with housing policies that arbitrarily look at criminal activity to deny housing to individuals, a large problem has been created in allowing people to find housing, only leading to increased risk of recidivism and lack of integration back into communities. Recently, focus has been placed on the importance of housing for effective reintegration and how reduced discrimination in both employment and housing policies can minimize future involvement with the criminal justice system.⁸

Renewed focus on decreasing barriers to housing should reduce myths about the effectiveness of the policies enforcing strict denials based on criminal records and should produce a number of best practices to assist communities and landlords determine proper criteria for criminal background screening. Local PHAs and other federally assisted housing have received guidance from the U.S. Department of Housing and Urban Development (HUD) as recently as November 2015. HUD has also expanded this guidance to all housing providers as recently as April of 2016. Other guidance has been released by the Sargent Shriver National Center on Poverty Law and the Urban Institute

⁸ *No Second Chance: People with Criminal Records Denied Access to Public Housing*. Rep. Human Rights Watch, 2004. Web. 19 Jan. 2016.

based on national research on incarceration and reentry and the actual barriers individuals face in finding housing.⁹

In this section I will identify current barriers are to reentry on a national level and explore what current living situations may look like for many of these individuals. The consequences of these barriers will be discussed as they relate to fair housing law. I will then examine solutions to reducing these barriers from this national research. These best practices will come from both policies adopted by the federal government as well as practices adopted by organizations focused on reentry.

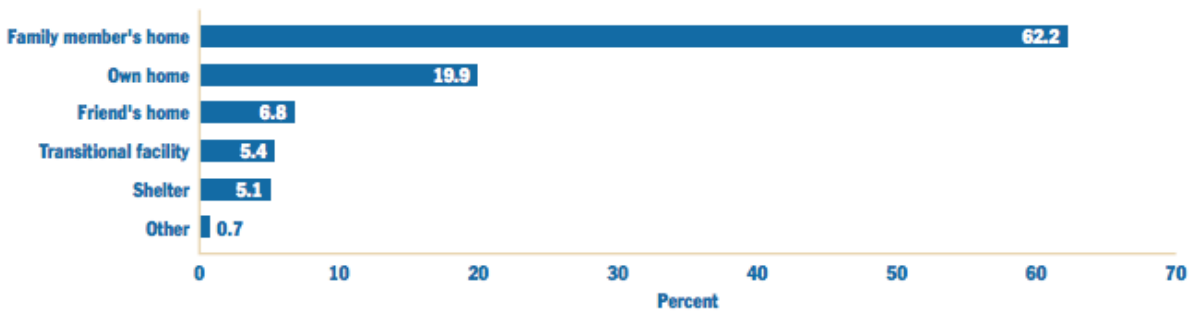
BARRIERS

Returning Home: Understanding the Challenge of Prisoner Reentry is a four state study conducted by the Urban Institute focusing on major topics such as employment, housing, and recidivism in an attempt to inclusively look at barriers facing those reentering communities. Housing is a major theme as it is normally what people aim to locate first upon release. A report released in 2006 links complications in finding housing to four major themes: 1) scarcity of affordable and available housing; 2) legal barriers and regulations; 3) inherent prejudices that restrict tenancy; and, 4) strict requirements among housing providers.¹⁰ Because research shows a direct link between the inabilities

⁹ Baer, Dame, Avinash Bhati, Lisa Brooks, Jennifer Castro, Nancy La Vigne, Kamala Mallik-Kane, Rebecca Naser, Jenny Osborne, Caterina Roman, John Roman, Sheli Rossman, Amy Solomon, Christy Visser, and Laura Winterfield. "Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio." *Urban Institute Justice Policy Center* (2006): 8. Web. 10 Feb. 2016.

¹⁰ *Ibid.*

to find stable housing and returning to prison, these complications are important to consider by policymakers and those living in these communities.¹¹



*Where respondents of 2006 study conducted by Urban Institute in Chicago sleep on their first night out of prison.*¹²

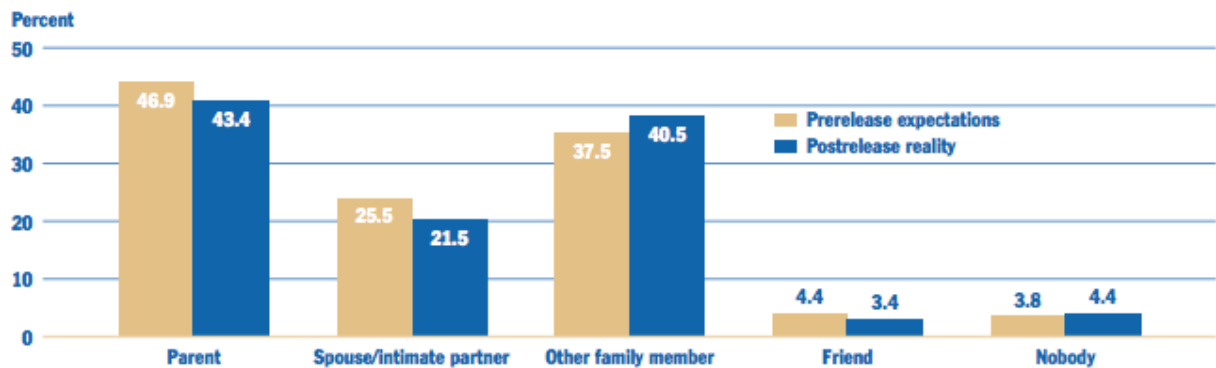
Figure 2.1: Sleeping Arrangements in Chicago

As seen in Figure 2.1, a majority of those in the study (62.2%) slept at a family member’s home. Many respondents cite this as being a temporary solution and said they would not be living in their current neighborhood “for too long”.¹³

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*



*Living arrangements based on prerelease expectations and post release reality of a 2006 study conducted by the Urban Institute in Chicago.*¹⁴

Figure 2.2: Expectations verses reality in living arrangements

Seventy-two percent of those released had intended to live with a parent or spouse, but for 7.5% of them this did not happen. Living with family members or friends could have disadvantages according to the Urban Institute’s report. Many of these people are moving back into neighborhoods with high rates of crime and concentrated social and economic disadvantage, an indicator associated with recidivism. Many of these are the communities where individuals had been living before conviction, leading them into similar patterns as before.¹⁵ Even more difficult is the pressure put on families and friends to house individuals returning from prison. These strained relationships could increase the amount of household disruptions that these individuals face, leading to a higher amount of residential mobility. This lack of stability also foreshadows an increased amount of recidivism and difficulty assimilating back into society.

¹⁴ *Ibid.*

¹⁵ Baumer, Eric. *Community Context and Offender Recidivism in Illinois*. Web. 10 March 2016.

Those without these close family ties may find it even more difficult to acquire housing during reentry. A shortage of temporary housing options leads many to become homeless.¹⁶ Homelessness is indicative of more general hardships faced upon reentry, including an increased risk of recidivism.¹⁷ The cycle of prison to homelessness and a return to prison makes accessing housing even more difficult, as many housing providers screen individuals with repeat convictions more harshly than others.

The barriers to accessing safe and affordable housing by people with criminal backgrounds has many negative affects not only on the individual and their families, but also on the communities where they reenter. Many of these communities may be low-income areas that may not be the best place for reentry due to their potential ties to criminal activity and lack of resources.

SOLUTIONS

The barriers surrounding reentry and the link between these barriers and recidivism are drawing attention by policymakers and communities who view the positive effects of stable housing. There are many things being done across the country to help make housing more accessible to those with a criminal record. Among them are HUD and nonprofit organizations.

¹⁶ Metraux, Stephen, and Dennis P. Culhane. "Homeless Shelter Use and Reincarceration Following Prison Release: Assessing the Risk." *Criminology and Public Policy* 3.2 (2004): 130-60. Blackwell Publishing Ltd, 7 Mar. 2006. Web. 19 Feb. 2016.

¹⁷ U.S. Department of Housing and Urban Development. Office of Public and Indian Housing. *Guidance on Housing Individuals and Families Experiencing Homelessness through the Public Housing and Housing Choice Voucher Programs*. 8, 2013. Print. Notice PIH 2013-15 (HA).

HUD GUIDANCE

The United States Department of Housing and Urban Development oversees the implementation and evaluation of numerous housing and development projects across the country. Of recent concern, these evaluations have been looking at what housing providers can do to “Affirmatively Further Fair Housing”, a requirement attached to federal housing funds under rules adopted to comply with the Fair Housing Act of 1968. In summer of 2015, HUD released a final rule on this topic outlining the analysis of problems and responses that HUD will require in order for participants to “take significant actions to overcome historic patterns of segregation, achieve truly balanced and integrated living patterns, promote fair housing choice, and foster inclusive communities that are free from segregation.”¹⁸ This ruling has given communities tools needed in order to better serve their citizens by providing open data sources. This ruling has sparked a change in how cities look at housing programs and is placing more attention on what cities can do to ultimately provide housing for all people within their communities, while remaining explicitly aware of protected classes under the Fair Housing Act.

An issue that has a huge impact and which many organizations have looked at is the role of criminal background screening in the procurement of affordable housing across the nation. Although this is a process done in multiple types of housing, many have focused on how HUD’s policies for Public Housing Authorities influence this process.

¹⁸ *Final Rule*. 136th ed. Vol. 80. Washington D.C.: U.S. Government Office, 2015. Web. 24 Jan. 2016.

On November 2, 2015 the U.S. Department of Housing and Urban Development's Office of Public and Indian Housing issued guidance for public housing agencies and providers of federally assisted housing on criminal background screening processes, including best practices. Aiming to clarify the still frequent use of a "one strike" policy in public housing, the new guidance aims to emphasize "second chances" for individuals with criminal history.¹⁹ Quoting former HUD Secretary Shaun Donovan, loosening restrictions and following best practices can aid in obtaining housing, which is "one of the most fundamental building blocks of a stable life."²⁰

HUD has outlined a series of fair housing guidance for public housing agencies and owners of federally assisted housing. These practices, although targeted to these developments, can be used broadly to help facilitate a series of local practices to be used in guiding the private housing market and challenging preconceptions regarding the use of criminal background screening.

The main focus of these recommendations is based off of the findings of the Sargent Shriver National Center on Poverty Law's report *When Discretion Means Denial: A National perspective on Criminal Records, Barriers to Federally Subsidized Housing*.²¹ It strongly argues that arrest records should not be used to deny housing since these records do not indicate conviction and thus their use is a discriminatory practice.²²

¹⁹ U.S. Department of Housing and Urban Development. Office of Public and Indian Housing. *Guidance on Housing Individuals and Families Experiencing Homelessness through the Public Housing and Housing Choice Voucher Programs*. 1, 2013. Print. Notice PIH 2013-15 (HA).

²⁰ Donovan, Shaun, Secretary. "Reentry Letter." Letter to PHA Executive Directors. 17 June 2011. *U.S. Department of Housing and Urban Development*. Web. 15 Feb. 2016.

²¹ Tran-Leung, Marie Claire. *When Discretion Means Denial: A National Perspective on Criminal Records, Barriers to Federally Subsidized Housing*. Rep. Sargent Shriver National Center on Poverty Law, Feb.

It also acts to clear up misconceptions regarding the rationale for formerly adopted “one strike” policies that deny admission or require eviction for criminal activity by any member of a household. Housing authorities and providers have discretion on how they want to handle this activity and are encouraged to look at the individual and the criminal activity to determine its connections to the safety and health of other residents. For drug related activity these considerations could involve the participation in drug rehabilitation program or other types of rehabilitation.

Best practices have been compiled in order to further these recommendations and provide examples of how some communities are integrating more flexible practices into their screening processes for housing. These largely revolve around allowing applicants to present mitigating circumstances on their criminal backgrounds during the application process. This is an opportunity for housing providers to have a more in depth view of an applicant’s criminal background, while reducing costs that may come from an appeals process.²³

Other practices that are important to consider include an in-depth look while evaluating a criminal record, by delineating connection between crimes of which an applicant has been convicted and applicability to tenancy. This also involves a look at how long ago a crime was committed along with any rehabilitation that has been completed since that time.

2015. Web. 10 Nov. 2015.

²² U.S. Department of Housing and Urban Development. Office of Public and Indian Housing. *Guidance on Housing Individuals and Families Experiencing Homelessness through the Public Housing and Housing Choice Voucher Programs*. 1, 2013. Print. Notice PIH 2013-15 (HA).

²³ *Ibid.*

THE BARRIERS TO HOUSING

Reiterating that HUD no longer has a one-strike policy nor does it approve of arrest records as evidence of criminal activity, HUD aims to break down barriers facing individuals with criminal histories in finding housing. Instead, HUD encourages PHAs and housing providers to look at four main areas that act as barriers to obtaining housing.²⁴ These are outlined by the Sargent Shriver National Center on Poverty Law's report, *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*.

These barriers are:²⁵

- Unreasonable look back periods
- Failure to consider mitigating circumstances
- Equating arrests with convictions
- Overbroad categories of criminal activity

Looking at these barriers along with HUD's guidance, the federal government has outlined a series of ways that housing providers can amend the way they conduct criminal background screenings in favor of practices that aim to affirmatively further fair housing goals.

The Shriver Center issued this report in February 2015 based on its review of the more than 300 written criminal background screening policies used by different federally

²⁴ *Ibid.*

²⁵ Tran-Leung, Marie Claire. *When Discretion Means Denial: A National Perspective on Criminal Records, Barriers to Federally Subsidized Housing*. Rep. Sargent Shriver National Center on Poverty Law, Feb. 2015. Web. 10 Nov. 2015.

subsidized housing developments. These written admission policies came from public housing, Housing Choice Voucher, and project-based Section 8 programs across the country to call to HUD's attention the need to help guide these organizations to make changes in their screening processes.²⁶

Unreasonable Look Back Periods

"Look back periods" are common practice in criminal background screening. This term refers to the amount of time in the past to consider an applicant's criminal record. When instituting this practice it is important, according to the report, to "ensure that the information remains relevant to the tenant screening process."²⁷ HUD has previously stated that 5 years is an appropriate amount of time but many of the PHAs in the study look back much farther than this, up to 20 or 25 years.²⁸ In addition, some organizations have no time limits, permanent bans, or compounding look back periods that increase barriers to a point that is unreasonable and could be detrimental to finding housing in one's lifetime.²⁹ An individual who has had no re-arrest or conviction in more than seven years is no more likely to commit a crime than someone with no conviction.³⁰ This shows how arbitrary the use of look back periods can be and how widespread misinformation and preconceptions regarding these criteria are.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Donovan, Shaun, Secretary. "Reentry Letter." Letter to PHA Executive Directors. 17 June 2011. *U.S. Department of Housing and Urban Development*. Web. 15 Feb. 2016.

²⁹ Tran-Leung, Marie Claire. *When Discretion Means Denial: A National Perspective on Criminal Records, Barriers to Federally Subsidized Housing*. Rep. Sargent Shriver National Center on Poverty Law, Feb. 2015.

Page VI. Web. 10 Nov. 2015.

³⁰ Watson, Jamie, Amy L. Solomon, Nancy G. La Vigne, and Jeremy Travis. *A Portrait of Prisoner Reentry in Texas*. Rep. Urban Institute, Mar. 2004. Web. 25 Jan. 2016.

Use of Arrests to Prove Criminal Activity

Using arrests instead of convictions to deny housing is common practice in screening done by a wide variety of affordable housing providers.³¹ One third of felony arrests did not result in a conviction, according to a study of the 75 largest counties in the US done by the U.S. Department of Justice in 2009.³² Oftentimes, this information is made available during routine background screenings. It is problematic since it does not constitute evidence of criminal activity; since arrests disparately impact racial minorities in this country such practices have a disparate impact on access to housing for protected classes.³³

Overbroad Categories of Criminal Activity

There are three types of criminal activity delineated by HUD where discretion can be used to deny housing. These types are: *drug-related criminal activity, violent criminal activity, and criminal activity that poses a threat to the health, safety, and welfare of other residents.*³⁴ HUD explicitly requires denial of housing for production of methamphetamines and bans lifelong sex offenders for life,³⁵ but most PHAs go further in creating a set of restrictions, many times more broad than the criminal activity types outlined by HUD. If applied too broadly, these policies often eliminate people with

³¹ Tran-Leung, Marie Claire. *When Discretion Means Denial: A National Perspective on Criminal Records, Barriers to Federally Subsidized Housing*. Rep. Sargent Shriver National Center on Poverty Law, Feb. 2015. Page VII. Web. 10 Nov. 2015.

³² Reaves, Brian A. *Felony Defendants in Large Urban Counties, 2009- Statistical Tables*. Publication no. NCJ 243777. U.S. Department of Justice Office of Justice Programs, Dec. 2013. Web. 10 Feb. 2016.

³³ Tran-Leung, Marie Claire. *When Discretion Means Denial: A National Perspective on Criminal Records, Barriers to Federally Subsidized Housing*. Rep. Sargent Shriver National Center on Poverty Law, Feb. 2015. Page VII. Web. 10 Nov. 2015.

³⁴ *Ibid.* VIII

³⁵ "Statutes." *Housing Justice*. National Housing Law Project, Web.

criminal histories that play no role in their ability to be good tenants and make it confusing for future tenants to know what the organization is looking for in the screening process.³⁶ Again, large bans for felony activities that have no impact on tenancy could disparately impact protected classes, something that organizations should make an effort to evaluate before setting such restrictions.³⁷ Many of these organizations may not understand the negative impacts these bans have and who is most affected. Guidance regarding what types of activities may impact tenancy and the negative consequences of broad exclusions are needed to make this process better.

Failure to Consider Mitigating Circumstances

Similar to broad bans on criminal activity in housing, the underuse of mitigating circumstances disqualifies individuals who can be good tenants. The lack of consideration of the time, nature, and extent of the applicant's past conduct could prevent many people from obtaining housing, especially those who have rehabilitated. A clear process for bringing mitigating circumstances forward, examples of what this looks like, and a process for offering some applicants second chances would all enhance organizations' ability to screen for individuals who have the capacity to make good tenants, especially those who would have been denied.

This problem is most common when landlords rely on third party screening companies. Technological advances have offered private companies the ability to provide

³⁶ Tran-Leung, Marie Claire. *When Discretion Means Denial: A National Perspective on Criminal Records, Barriers to Federally Subsidized Housing*. Rep. Sargent Shriver National Center on Poverty Law, Feb. 2015. Page VII. Web. 10 Nov. 2015.

³⁷ Ibid. IX

housing providers with instant results from criminal background checks. As the real estate industry has become larger, property management firms increasingly rely on these services. These results have created an “unprecedented stigmatization” of applicants with criminal backgrounds as their histories are used at the very beginning of a screening process leaving them little ability to explain their convictions or any efforts at rehabilitation.³⁸

In addition, the services that these companies offer have been found to have numerous errors and facilitate the use of arrest records or expunged convictions to bar someone from housing. These practices offer applicants little means to correct these mistakes, with companies simply providing a toll free number to contact instead of being able to directly interact with a housing provider.

CONCLUSION

The national attention placed on criminal background screenings in the process of attaining housing makes information covering the topic and best practices readily attainable. It also brings attention to the poor screening processes that limit the number of housing units available to individuals who have had involvement with the criminal justice system. The incorporation of these best practices in the City of Austin has the potential of increasing the amount of housing available to persons with criminal backgrounds. The

³⁸ Oyama, Rebecca. "Do Not (Re)Enter: The Rise of Criminal Background Tenant Screening as a Violation of the Fair Housing Act." *Michigan Journal of Race and Law* 15.1 (2010): 187. *ProQuest*. Web. 10 Mar. 2016.

following research will look at current screening in Austin and provide recommendations for the incorporation of these best practices.

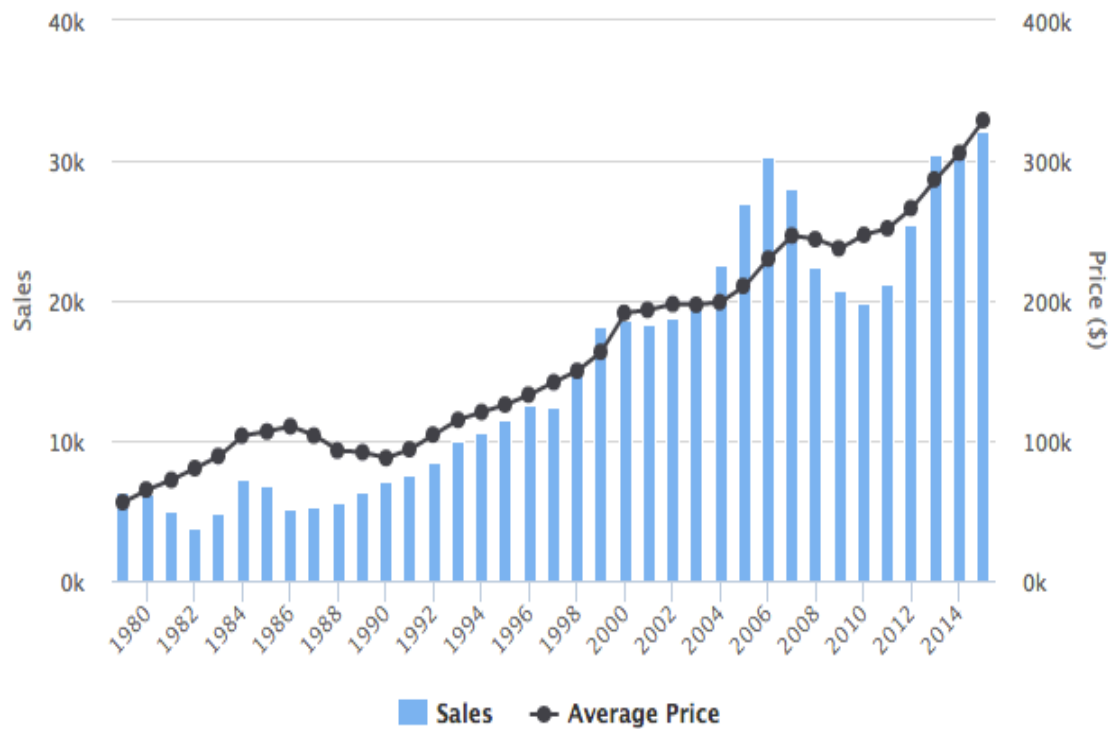
Chapter 3: Austin

CURRENT HOUSING MARKET

Individuals reentering Travis County and the City of Austin from incarceration face many of the same barriers as those found elsewhere across the nation.³⁹ Limited access and availability of affordable housing and the large homeless population are of top concern. The population of Austin is growing rapidly, with over 57,000 people moving to the metro area between July of 2014 and 2015.⁴⁰ For many current residents, the pressures on the city's housing availability create a lack of affordability that is crucial for both renters and owners. As the population has increased, home prices and rents in many central areas have skyrocketed, pushing many to relocate from their current communities.

³⁹ Baer, Damelza, Avinash Bhati, Lisa Brooks, Jennifer Castro, Nancy La Vigne, Kamala Mallik-Kane, Rebecca Naser, Jenny Osborne, Caterina Roman, John Roman, Sheli Rossman, Amy Solomon, Christy Visser, and Laura Winterfield. "Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio." *Urban Institute Justice Policy Center* (2006): Page 8. Print.

⁴⁰ *Four Texas Metro Areas Collectively Add More Than 400,000 People in the Last Year*. Publication no. CB 16-43. United States Census Bureau, 24 Mar. 2016. Web. 10 Apr. 2016.

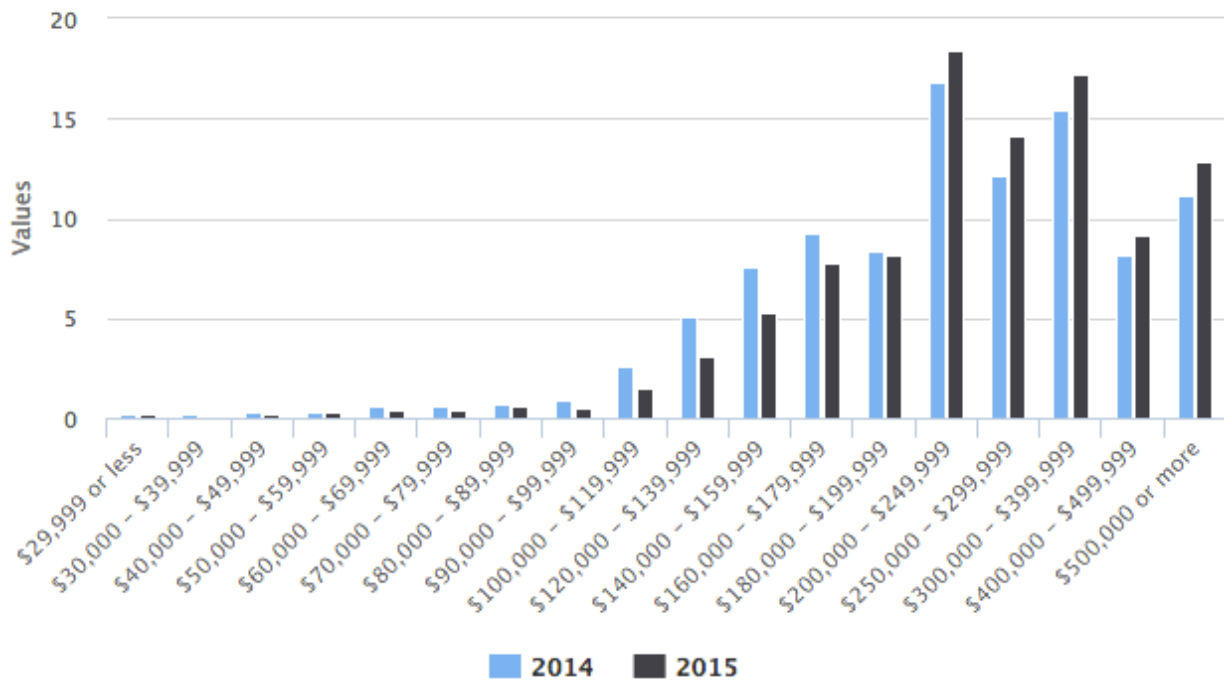


*Home sales and average price of homes in Austin MLS from 1980 to 2014.*⁴¹

Figure 3.1: Home sales in Austin MLS

Looking at Figure 3.1 above, it is clear to see that starting in 1990 the average price of homes has increased, only stagnating during national housing declines. From 1992 to 2012 the average home price in the Austin MLS area has tripled, going from \$100,000 to \$300,000.

⁴¹ "Housing Activity and Affordability." *Real Estate Center*. Texas A&M University, 2015. Web. 15 Feb. 2016.



The distribution of home values from 2014 to 2015 in the Austin MLS based on data from Texas A&M..⁴²

Figure 3.2: Home value distribution

In Figure 3.2, one can see that the majority of homes are priced above \$200,000, with the number declining very quickly below this point. Additionally the number of homes valued below \$180,000 saw a sharp decline between 2014 and 2015, something that points to a trend in housing values and no clear sign of this stopping.⁴³

⁴² "Housing Activity and Affordability." *Real Estate Center*. Texas A&M University, 2015. Web. 15 Feb. 2016.

⁴³ *Ibid.*

This information, provided by Texas A&M University Real Estate Center's Texas Housing Affordability Index (THAI), shows just how much the City of Austin has transgressed into a highly unaffordable city for many people. This continuing trend is leading Austin to be one of the most expensive cities to live in Texas, a departure from the livable city that Austin is known as.⁴⁴

Rental prices follow similar trends as single family homes in Austin. In a 2014 Housing Choice Survey, 69% of Austin residents reported paying more than 1/3 of their income on housing costs.⁴⁵ There is a strong amount of rental housing availability in Austin for those making between \$20,000 and \$50,000 annually, however, 27% of the population of Austin makes less than \$20,000, a price point that lacks a great number of housing choices.⁴⁶

HOMELESSNESS

In 2015, First Lady Michelle Obama along with HUD secretary Julian Castro, issued a call to action to mayors across the country to end veteran homelessness. Austin's Mayor Steve Adler announced his participation on August 25, 2015 to implement a goal to effectively end veteran homelessness by Veterans Day of that year. To meet this goal

⁴⁴ Urban Land Institute- Austin, Housing Works Austin, Real Estate Council of Austin, and Austin Area Research Organization. *Building and Retaining an Affordable Austin*. Rep. 5., June 2010. Web. 15 Feb. 2016.

⁴⁵ BBC Research and Consulting. *2014 Comprehensive Housing Market Analysis*. Rep. City of Austin, 31 July 2014. Web. 15 Feb. 2016.

⁴⁶ Urban Land Institute- Austin, Housing Works Austin, Real Estate Council of Austin, and Austin Area Research Organization. *Building and Retaining an Affordable Austin*. Rep. 5., June 2010. Web. 15 Feb. 2016.

the city would need to house the approximately 200 homeless veterans and their families living in the city of Austin.⁴⁷

This called for a massive effort by different organizations having influence in the city, among them, Ending Community Homelessness Coalition (ECHO), the Austin Apartment Association, and the Housing Authority of the City of Austin (HACA). Not only did this effort require the loosening of restrictions by housing providers but it was necessary for a large amount of counseling and funding to be provided to reach this goal.

As of December 30, 2015 the City of Austin declared that it had effectively ended veteran homelessness. The coalition that happened between housing providers, the city, and service organizations was an example of an amazing effort that can happen when there is a foreseeable goal. However, many have claimed that this effort is not great enough and that there are many others living in Austin who could benefit from this city directed service, not just veterans. The Ending Community Homeless Coalition (ECHO) of Austin is committed to ending homelessness across the entire city and around it. Each year the organization does a point-in-time count to total the number of individuals experiencing homelessness in the city of Austin. On January 22, 2016 the organization's many volunteers counted 2,197 individuals.⁴⁸ Many of these people were in temporary shelters at the time of this count. The mayor's efforts at ending veteran homelessness are a fantastic start for the city, but do not come close to helping provide permanent shelter for more than 2,000 individuals experiencing homelessness in Austin.

⁴⁷ Diaz, Joy. "Amid Effort to House Homeless Veterans, Advocates Call for More Inclusive Effort." *KUT*. 27 Aug. 2015. Web. 10 Feb. 2016.

⁴⁸ *Travis County Annual Count of People Experiencing Homelessness Preliminary Results*. Rep. Austin ECHO, 2016. Web. 10 Apr. 2016.

Many of these efforts can be expanded to help other groups of people. Most relevant for this issue, the coalition made many beneficial moves towards reducing barriers of criminal background screening by focusing on the Housing First methodologies adopted in 2010. Nine hundred individuals were housed by 2014 and a new goal was created by Austin City Council to create at least 200 new Housing First units by 2019.⁴⁹ As Austin Mayor Steve Adler said in August 2015, “Ultimately we need to be focused on- what this council needs to focus on- because it is truly the core of the issue, it is the answer to solving the problem and not just addressing the symptom, is to focus on getting people homes.”⁵⁰ This focus on Housing First is a first step toward reducing barriers for the hardest to house in Austin.

RE-ENTRY TO AUSTIN

The state of Texas has one of the highest rates of incarceration in the country. At 51% higher than the national average, the state not only has an abnormally high number of individuals incarcerated, but also of people entering the community with conviction records. In 2005, the Texas Department of Criminal Justice released 64,512 individuals back into the community.⁵¹ According to the Criminal Justice Policy Brief issued by the Texas League of United Latin American Citizens (LULAC) State Executive Office, as of August 2004 one in every 11 adults in Texas had a felony conviction on their criminal

⁴⁹ ECHO, *Pay for Success: Using Private and Public Investments to House the Homeless in Austin*. Page 2. Web. 20 March 2016.

⁵⁰ Diaz, Joy. "Amid Effort to House Homeless Veterans, Advocates Call for More Inclusive Effort." *KUT*. 27 Aug. 2015. Web. 10 Feb. 2016.

⁵¹ *Housing Needs and Barriers for Formerly Incarcerated Persons Travis County*. Rep. Austin Travis County Reentry Roundtable, 16 July 2008. Web. 15 Dec. 2016.

record.⁵² A felony conviction presents large complications for individuals attempting to reintegrate into their community, including access to jobs and housing. This is made even more striking when realizing that individuals who struggle gaining access to housing are more likely to reoffend, most likely leading to re-incarceration.⁵³

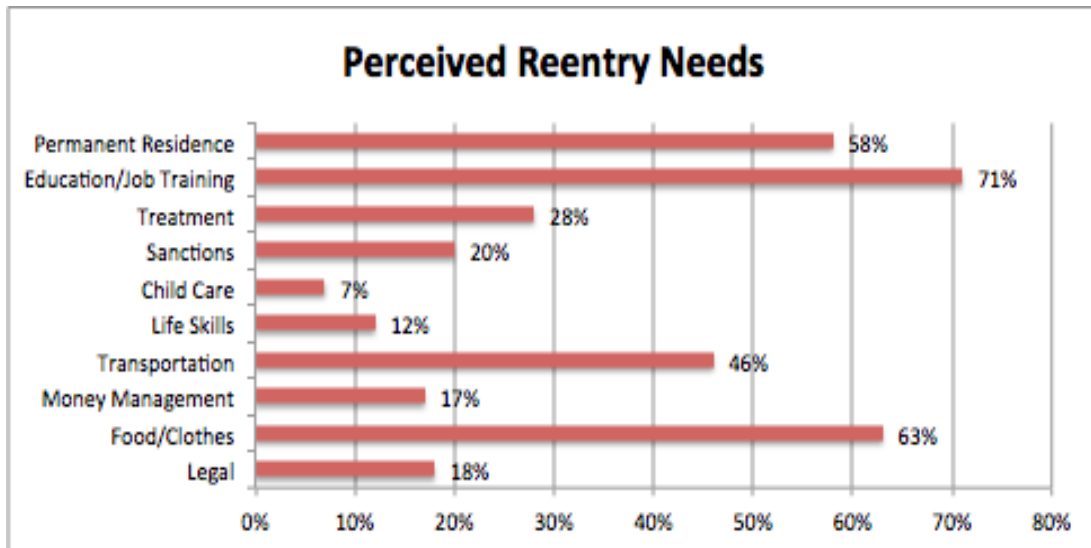
Travis County is highly affected by these large rates of incarceration and the subsequent recidivism that takes place due to inadequate housing. In 2007 the Travis County Correctional Complex released 20,960 people and TDCJ released over 3,000 individuals into Travis County.⁵⁴

This is a large number of people, many of whom may have criminal histories that prevent them from adequately assimilating into society. The Reentry Roundtable attempted to find out what the largest barriers to finding housing were for these individuals. In their 2008 report, *Housing Needs and Barriers for Formerly Incarcerated Persons in Travis County*, 170 individuals were surveyed or interviewed upon release from the Travis Unit of the Texas Department of Criminal Justice and Travis County Correctional Complex Del Valle who were returning to Travis County.

⁵² Del Llano, Ann, and Ana Yanez-Correa. *Proven Pro-family Criminal Justice Policies That Save Families, Save Tax Payers' Money and Improve the Safety of Our Community*. Issue brief. Texas League of United Latin American Citizens, Aug. 2004. Web. 12 Mar. 2016.

⁵³ Watson, Jamie, Amy L. Solomon, Nancy G. La Vigne, and Jeremy Travis. *A Portrait of Prisoner Reentry in Texas*. Rep. Urban Institute, Mar. 2004. Web. 25 Jan. 2016.

⁵⁴ *Housing Needs and Barriers for Formerly Incarcerated Persons Travis County*. Rep. Austin Travis County Reentry Roundtable, 16 July 2008. Web. 15 Dec. 2016.

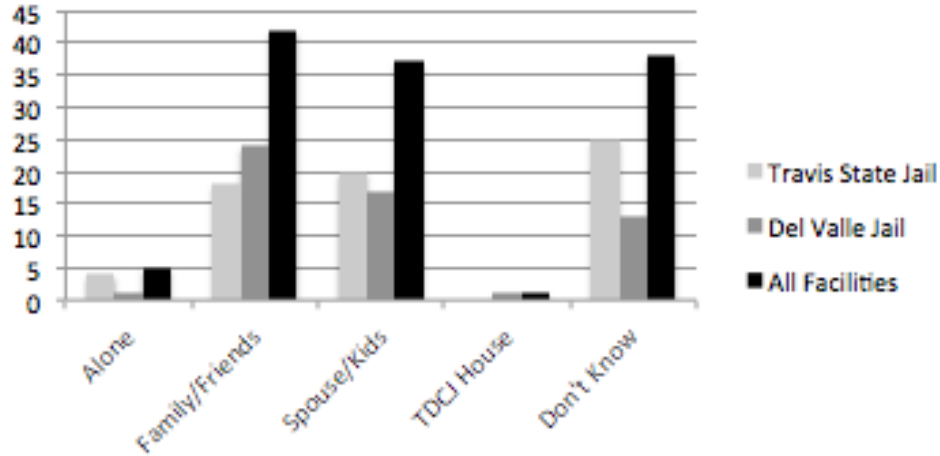


Perceived reentry needs as defined by individuals incarcerated in Travis County from study conducted by Austin Travis County Reentry Roundtable in 2008.⁵⁵

Figure 3.3: Perceived reentry needs

Upon being asked about what they would need assistance with upon reentry, 71% reported education and job training to be a need while 58% claimed permanent residence as an immediate need.

⁵⁵ *Ibid.*



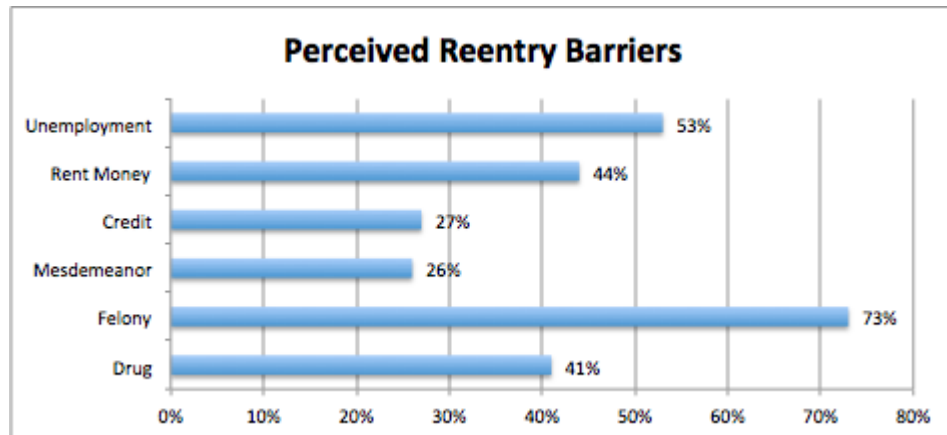
*Responses of who incarcerated individuals plan to live with post-release from study conducted by Austin Travis County Reentry Roundtable in 2008.*⁵⁶

Figure 3.4: Post-Release living arrangements

Most of the individuals surveyed (64%) reported that they planned to live with a spouse, family, or friend.⁵⁷ Due to lack of affordability, the study cites the private housing market as being difficult to access. As discussed previously, Austin's lack of overall affordability limits housing access for a large amount of the population.

⁵⁶ *Housing Needs and Barriers for Formerly Incarcerated Persons Travis County*. Rep. Austin Travis County Reentry Roundtable, 16 July 2008. Web. 15 Dec. 2016.

⁵⁷ *Ibid.*



Perceived barriers to reentry as defined by individuals incarcerated in Travis County from study conducted by Austin Travis County Reentry Roundtable in 2008.⁵⁸

Figure 3.5: Perceived barriers to reentry

Of the respondents, 44% cite rent money as a perceived barrier to reentry, but 3/4 see their felony conviction as a barrier (73%). Adding to this, 63% of respondents in a study of reentry in Houston had been convicted more than once and 35% had served time for a parole or probation violation.⁵⁹ As will be seen in housing research, the multiplier effect these convictions has makes it even more difficult to find housing, showing the importance of reducing barriers and preventing recidivism.

The City of Austin has seen a lot of changes due to population growth that does not seem to be slowing down that is exacerbating the lack of affordability in housing. There are multiple programs that aim to increase supply of affordable housing.

⁵⁸ *Ibid.*

⁵⁹ La Vigne, Nancy G., and Vera Kachnowski. *Texas Prisoners' Reflections on Returning Home*. Rep. Urban Institute, Oct. 2005. Web. 15 Mar. 2016.

WHAT IS BEING DONE

The city of Austin has a variety of programs in place with a goal to leverage private investment in affordable housing through different incentives. The 2014 Comprehensive Housing Market Analysis stated the need for this investment: “In the current environment, in which housing prices are rising and private sector developers are eager to meet growing demand, it is appropriate to ask them to be a stronger partner in affordable housing creation.”⁶⁰ The University Neighborhood Overlay (UNO) and Central Business District (CBD) programs are based in specific sectors of the city, whereas Safe, Mixed-Income, Accessible, Reasonably-Priced, and Transit-Oriented (SMART), Rental Housing Development Assistance (RHDA), and Vertical Mixed Use (VMU) are meant to be utilized in a broader range of areas. These programs aim to create mixed income communities through public subsidies and private investment and are largely used in conjunction with Low Income Housing Tax Credits and other federal funding sources. A brief overview of these programs will further help to understand what role the city has in producing affordable housing and the relationship with private developers.

The Austin Housing Finance Corporation’s Rental Housing Development Assistance Program (RHDA) creates a series of guidelines for the utilization of Federal funding sources, such as HOME Funds and Community Development Block Grants, and local funds, including the Housing Trust Fund and the General Fund. This program

⁶⁰ BBC Research and Consulting. *2014 Comprehensive Housing Market Analysis*. Rep. City of Austin, 31 July 2014. Web. 15 Feb. 2016.

allows for funding up to \$2.5 million to be used for acquisition, rehabilitation, or new construction of affordable housing that complies with the city's S.M.A.R.T program.⁶¹

Program	Full Name	# of completed units as of August 2015	% of units dedicated to AH	Target MFI
RHDA	Rental Housing Development Assistance Program	3109	10%	50% MFI
SMART	Safe, Mixed-Use, Accessible, Reasonably Priced, Transit-Oriented	558	10% *	80% MFI
UNO	University Neighborhood Overlay	461	10% 10%	80% MFI 60% MFI
VMU	Vertical Mixed-Use	164	10% 10%**	80% MFI 60% MFI**
TOD	Transit Oriented Development	38	10% of density bonus	60% MFI
Rainey		25	10% of density bonus	80% MFI

* Varies based on fee waiver

** Neighborhood can opt-in to require 60% MFI

A brief overview of affordable housing programs in Austin and their current number of affordable units as of 2015.^{62,63}

Table 3.1: Affordable Housing Programs

S.M.A.R.T. Housing is located throughout Austin utilizing the Austin Housing Finance Corporation to partner neighborhoods and developers in cultivating these

⁶¹ Austin Housing Finance Corporation. *Rental Housing Development Assistance Program*. Publication. 12 Jan. 2013. Web. 15 Apr. 2016

⁶² "Affordable Housing Inventory." *Data.austintexas.gov*. City of Austin, 2015. Web. 25 Nov. 2015.

⁶³ Neighborhood Housing and Community Development. *S.M.A.R.T. Housing Policy Resource Guide*. Publication. City of Austin, June 2008. Web. 15 Feb. 2016.

communities. In exchange for fee waivers and fast-track review administered by the city, these developments provide a percentage of their units in the program.

<p>A builder provides:</p> <p>10% S.M.A.R.T.TM Reasonably Priced</p> <p>20% S.M.A.R.T.TM Reasonably Priced</p> <p>30% S.M.A.R.T.TM Reasonably Priced</p> <p>40% S.M.A.R.T.TM Reasonably Priced</p>	<p>The City of Austin provides:</p> <p>25% Fee Waivers & Fast-Track Review</p> <p>50% Fee Waivers & Fast-Track Review</p> <p>75% Fee Waivers & Fast-Track Review</p> <p>100% Fee Waivers & Fast-Track Review</p>
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Type of Housing Unit	Affordability Requirement
For “reasonably-priced” rental units (single- or multi-family)	Units must be “reasonably-priced” for at least 5 years (unless another funding source requires a longer affordability period)
For “reasonably-priced” home-ownership units (single-family or condominium)	Units must be “reasonably” priced for at least 1 year (unless another funding source requires a longer affordability period)
City-approved affordable housing Land Trust or similar entity	Affordability period to be established by Land Trust.
Other policy initiatives	Some policy initiatives have requirements that exceed S.M.A.R.T. HousingTM affordability periods, such as the University Neighborhood Overlay and Vertical Mixed Use initiatives, described in greater detail in the Related Policy Initiatives section.
For all designated “reasonably-priced” units	Units must be “reasonably-priced” at initial occupancy and for the full affordability period. Failure to meet this requirement will require repayment of waived fees and other penalties.

*An overview of the S.M.A.R.T. housing program in Austin and the type of incentives it offers.*⁶⁴

Table 3.2: S.M.A.R.T. Program

In addition to the S.M.A.R.T. Program’s affordability requirements ranging from one to five years, many of these developments receive federal funding sources extending these periods. This program also allows for land trusts dedicated to the city, meaning that these units will always be affordable, this allows the builder 100% fee waiver and fast-

⁶⁴Neighborhood Housing and Community Development. *S.M.A.R.T. Housing Policy Resource Guide*. Publication. City of Austin, June 2008. Web. 15 Feb. 2016.

tracked review depending on what percentage of units fall into this category. Reasonably priced for S.M.A.R.T. housing is that which does not exceed 30% of a household earning 80% or less of the median family income.⁶⁵

The Vertical Mixed Use program (VMU) decreases the amount of parking requirements in exchange for affordable units. For rental units, 10% of units must be affordable at 80% MFI for 40 years. If the surrounding neighborhood has opted-in, these units must be affordable to families at 60% MFI.

Density bonus program, such as Downtown CBD and DMU (Downtown Mixed Use) allow sites to exceed the floor area ratios (FAR) of the current land development code. This program requires that 10% of the bonus units to be affordable under the standards of S.M.A.R.T. housing. However, developers can instead pay a fee-in-lieu instead of including these units in the building.

The University Neighborhood Overlay (UNO) was created to increase housing density in West Campus, located directly next to the University of Texas. Developments using this program must dedicate 10% of their bedrooms to individuals making 80% or less of MFI and an additional 10% making 65% or less MFI for 15 years. For developments increasing height by an additional 15', 10% of units must meet household incomes less than 50% MFI for 15 years, with no ability to pay into the Housing Trust Fund.

⁶⁵ Neighborhood Housing and Community Development. *S.M.A.R.T. Housing Policy Resource Guide*. Publication. City of Austin, June 2008. Web. 15 Feb. 2016.

Through these development programs offered by the City of Austin, there have been an increased number of affordable housing units developed utilizing public-private partnerships. These developments aim to create mixed-income communities allowing for more choice in the types of affordable housing units and an increase of availability in high-opportunity areas.⁶⁶ However, more can be done to increase the number of units produced from these programs and local stakeholders are currently analyzing increased methods for producing these units.⁶⁷

In May of 2015 The City of Austin's Neighborhood Housing and Community Development Department created the City of Austin's Fair Housing Action Plan (FHAP) in order to fulfill the U.S. Department of Housing and Urban Development's requirement for cities receiving federal housing and community development funds.

Specific actions that the city will undertake to reduce any impediments to fair housing over the next few years are outlined. Specifically, these efforts focus on the lack of affordable housing and direct barriers to fair housing, such as addressing steering practices and lack of knowledge on fair housing.⁶⁸ Specifically, the barrier addressing lack of affordable housing impacting protected classes has led to the creation of a goal to "pursue implementation of reasonable look back periods for criminal backgrounds in rental criteria for developments with City of Austin funds to endure the look back periods don't screen out more people than necessary." This calls for combined efforts by

⁶⁶ Leak, Erica. "City of Austin Neighborhood Housing and Community Development." Personal interview. 15 Mar. 2016.

⁶⁷ *Ibid.*

⁶⁸ *The City of Austin's Fair Housing Action Plan*. City of Austin, 20 May 2015. Web. 12 March 2016.

Neighborhood Housing and Community Development, the Planning and Zoning Department, and City Council. The document cites these efforts being completed in 2015, but so far these have focused mainly on increasing the amount of Permanent Supportive Housing and not criminal background screening within the wider community.

In April of 2016, Austin hosted the 2016 Fair Housing Conference aimed at educating housing providers in Austin about fair housing practices and relation to housing choice by Austin residents. This conference is meant to provide education to the community and housing providers on what current impediments to Fair Housing Choice are and what this community can do to overcome them.⁶⁹

In 2010, Permanent Supportive Housing units were a target for support by Austin's City Council and a strategy for working with community stakeholders to develop a comprehensive strategy was created. In 2014 the *Report on the Status of Permanent Supportive Housing in Austin* was developed to summarize these efforts.⁷⁰ This report looked at the success of the Roof Over Austin program, a strategy created to leverage city resources for PSH, by highlighting those directly benefiting from it and put future goals forward for housing those in the most need in Austin.

EMPLOYMENT SCREENING

Similar to the screening of criminal backgrounds for housing, employment screening is also a large barrier facing individuals reentering communities. Nationwide, it

⁶⁹ City of Austin Human Resources Department. *2016 Fair Housing Conference*. Web. 20 Mar. 2016.

⁷⁰ *A Roof Over Austin*. Rep. City of Austin, Aug. 2014. Web. 12 Feb. 2016.

is estimated that 87% of employers screen for criminal backgrounds. Many applications for employment include similar lines of questioning regarding an individual's involvement with the criminal justice system. In 2015 President Obama announced that federal employers would no longer use a criminal background screening process at early stages of an application.⁷¹ Referred to as “Ban the Box,” this policy has made headway in the past few years across the nation.

The City of Austin “banned the box” for city hiring allowing the city to speed up its hiring process by eliminating criminal background screening on all applicants and instead focusing on just those that fit the position.⁷² In March of 2016 the city went a step further by passing the *Fair Chance Hiring Ordinance* making it the first city in Texas to “ban the box” for private employers.⁷³ This process does not eliminate criminal background screening, but instead only does so at a later stage in an application process.

The goal of “ban the box” is to prevent employers from screening people out of a job simply because of their criminal record. Waiting until later in the hiring process allows for the applicant to demonstrate their abilities for the job before their criminal background comes into play.

As this ordinance is new it will be interesting to watch this new hiring process unfold in Austin. It will hopefully spark more conversation about criminal background

⁷¹ McBride, Hannah. "Austin Poised to 'Ban the Box'" *The Texas Observer*. 22 Mar. 2016. Web. 27 Mar. 2016.

⁷² Diaz, Joy. "City of Austin 'Bans the Box' To Help Ex-Inmates Land Jobs." *KUT*. 31 Aug. 2015. Web. 19 Mar. 2016.

⁷³ McBride, Hannah. "Austin Poised to 'Ban the Box'" *The Texas Observer*. 22 Mar. 2016. Web. 27 Mar. 2016.

screening in housing and help demonstrate the barriers that screening puts on applicants in both sectors.

OVERVIEW

The culmination of a large number of individuals reentering Travis County each year and the increased lack of availability of affordable housing units makes it increasingly difficult for individuals with criminal backgrounds to obtain housing in Austin, Texas. The current political momentum following the “Ban the Box” for employment screening and Mayor Adler’s dedication to ending veteran homelessness makes it a good time to spark change.

The next step is to look at how many affordable housing units there are in the city utilizing the programs overviewed in this chapter and what criminal screening practices are currently in place. Comparing these with best practices will give insight as to how the city can move forward in creating a community that makes housing more available to all members of the community.

Chapter 4: Research

As reviewed in Chapter 3, there are a variety of housing programs in place to increase the amount of affordable housing in Austin. These housing providers are scattered throughout the city and offer families and individuals making below the median family income some choices in where they might live. This report is intended to look at what type of impact these units are making on the ability to provide housing for re-entry by looking specifically at their process for criminal background screening.

METHODOLOGY

The City of Austin's Department of Neighborhood Housing and Community Development has compiled an inventory of units developed utilizing the previously outlined programs. For the purpose of this research, I have downloaded this list and sorted it in order to find currently subsidized units within the city. This final list and the number of units within each development can be found in Appendix 1. The list created only includes completed properties for ease of finding data. In addition, only developments with four or more units were included to allow for ease of contacting the property management. With this criteria met there was a total of 105 properties in the city that have received funds or incentives in exchange for providing 5,644 affordable housing units. The affordability period on these developments ranges from 5 years to 40

years depending on the development program and range in being affordable to households making between 30 and 80% of the median family income.⁷⁴

	30% MFI Extremely low-income	50% MFI very low-income	80% MFI Low-income
4 Person Household Median Income Limit	24,250	38,400	61,450
Rent Limit/ month	\$606.25	\$960	\$1,536.25

The Median Family Income (MFI) by percentage in Travis County for a household of 4-person and the affordable rental price based on 30% of income. These numbers are based on the FY2015 Area Median Family Income for Travis County, Texas of \$76,800 for a 4-person household.⁷⁵

Table 4.1: MFI and rents

Of these 105 units, 59 owners are represented. Large property companies are common throughout Austin, and represent a variety of housing types. Many of these large companies are seen represented in the University Neighborhood Overlay adjacent to the University of Texas. This neighborhood has a large amount of newly constructed buildings with numerous units.

⁷⁴"Affordable Housing Inventory." *Data.austintexas.gov*. City of Austin, n.d. Web. 25 Nov. 2015.

⁷⁵ 2015 HOME Program Income Limits by Household Size. Rep. City of Austin, Neighborhood Housing and Urban Development, 1 June 2015. Web. 15 Apr. 2016.

As can be seen in the map in Appendix 2, it is clear to see the concentration of these affordable housing providers in specific neighborhoods of the city, mainly west campus and in the central Austin area. There are virtually no units located beyond U.S. Route 183 on the north side and U.S. Route 290 to the south. This may largely be due to the emphasis placed on the location of developments built under these programs. The developments used in this analysis are all newly constructed and aim to create affordable housing in parts of the city that lack this type of developments, making them highly desirable.

PROCESS OF FINDING INFORMATION

In order to find specific criminal background screening criteria for the developments providing affordable housing, the list was broken into six sections and divided among participants. The six groupings of developments were created to geographically represent parts of the city and to give equal distribution among participants. Participants included Melissa Orren from Austin Tenants Council, Jaclyn Powers from Caritas of Austin, Amelia Adams and Milay Viciado-Duncan who volunteered for the project, Bree Williams and Lauren Marsiglia of Austin ECHO, and myself. These breakups were divided by region within the city and past relationships with housing providers that Bree Williams had as part of her work at Austin ECHO.

In order to gather information, a number of techniques were used. Site visits and phone calls oftentimes followed a standardized script located in Appendix 3. Oftentimes,

criminal background screening information can be found on application materials. These were either given out by the housing provider or found on their websites.

In the end, 33 housing developments provided information on the screening process with information ranging from specific criteria and written materials to brief explanations of process. A table of these findings can be found in Appendix 4.

MAJOR THEMES

	# of properties	# of units	% of units
Criminal Background Screening Takes Place	31	1363	99%
Look back period extends to 18 years old	20	249	18%
Screen for: Felonies	27	860	62%
Misdemeanors	8	249	18%
Use of 3 rd Party	19	225	16%

Table 4.2: Practices of properties included in research

Of the criteria gathered, a few major themes became known across housing providers which can be seen in Table 4.2. The use of third party screening is prevalent especially among property companies that own numerous developments across the city. Of the 33 developments that data was gathered on, 19 of the properties used a 3rd party to screen applicants. This is representative of 225 units, which is 16% of the units that

information was gathered on. Companies such as Real Page, used by a majority of the housing providers, offer residential screening paid for by the applicant. This service advertises a “pass-fail” result format that gives a simple yes or no answer to property managers. Criteria for these sites are developed by property management and then given to the company. As one employee at a property told me, “This process reduces our liability, allowing us to eliminate any personal feelings when screening applicants.”⁷⁶ The use of third parties, as mentioned previously, is criticized for its potential inaccuracy and lack of transparency.

The use of extensive look back periods was another theme in the results found in this research. Twenty of the 33 developments had look back periods that extended until an applicant was 18 years old. These developments represented 18% of the total units studied. Although many of the housing providers used criminal history reporting that went back to when an applicant was 18, 3 additional developments had extensive look back periods ranging from 7 to 15 years.

Example 1:

Regents West has two developments located in the West Campus neighborhood that caters to students at the University of Texas at Austin. Utilizing the UNO program it has 23 total affordable rooms across the two buildings.

⁷⁶ Leak, Erica. "City of Austin Neighborhood Housing and Community Development." Personal interview. 15 Mar. 2016.

An excerpt from the screening criteria:

Criminal History- If you have been arrested, convicted or received deferred adjudication for any felony your application will automatically be denied. Some misdemeanors in the following categories will be denied: property, animal, violence, family, public justice, weapons, organized crime, drug, sex and unclassified related crimes.⁷⁷

This screening process shows the use of both undefined look back periods and very broad categories of criminal activities. It is representative of many of the developments surveyed through this process and shows the clear boundaries that exist for individuals that have criminal background histories.

Example 2:

Garden Terrace is a Foundation Communities property of efficiency units located in South Austin. Residents at this property are typically formerly homeless individuals. The Criminal History Criteria are clearly outlined in a document that is available for applicants.⁷⁸ Criteria include use of look back periods and clear definitive language on types of criminal activity that will exclude an applicant.

⁷⁷ Regents West. *Rental Criteria*. Publication. 2016. Print.

⁷⁸ Garden Terrace. *Criminal History Criteria*. Publication. 2015. Print.

An excerpt from the screening criteria:

One of the following types of conduct committed by an applicant within the past five (5) years:

- *Illegal possession / discharge/ display/ carrying of a firearm or illegal/deadly weapon*
- *Assault, aggravated assault, assault by threat, stalking*
- *Physical violence to persons or property, or criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another*

This excerpt from the Garden Terrace Criminal History Criteria exemplifies how clear language and look back periods can be used to give applicants clear direction in what the screening process is and why they may face denial in this process. This transparency is in direct opposition to how criminal screening is done through third parties. This process does not allow for applicants to have clear definitions of how their criminal history is being screened and leaves it up to the third party to take any discretion in making these decisions.

Garden Terrace allows for applicants to provide supplemental information on specific criminal charges on their record, allowing the housing provider to look at cases on an individual level and use any past rehabilitation efforts as evidence of good tenancy.

OVERVIEW

The information gleaned from housing providers that use funds or incentives from the City of Austin and in turn provide affordable housing shows the wide range of criminal background screening that takes place in the city. Accessing criminal history criteria from housing providers is a difficult process and shows many of the barriers that exist for those with a criminal record. Many of the individuals working at the developments know little about what the process looks like and deflect to the third party screener or to a higher level of the company. In many instances, these higher levels were difficult to contact and when contacted, were still unable to give clear screening criteria.

Criteria that were made available could be very clear like that of Foundation Communities, or needed a lot more explanation. The Mary Lee Foundation, which operates a number of affordable properties across Austin, simply has applicants report any felonies that household members are convicted of and leaves space for dates and details.

In conclusion of these findings, there is some great effort being done within the city to reduce barriers to affordable housing units. Some providers appear to be very aware of criminal background screening and attempt to decrease barriers, however many of the properties that information was collected on have unclear screening practices and lack transparency in this process. The use of third party screening agencies adds to this lack of clear information and makes the process of explaining an individual's criminal history and rehabilitation much more difficult. The next chapter will aim to compare

these practices with those produced by HUD and other organizations. A list of recommendation will be offered along with their proposed feasibility.

Chapter 5: Comparison

The next step in analyzing the results of surveying housing providers in Austin is to compare their criminal background screening process to barriers and best practices outlined on a national level by the Shriver Center.

UNREASONABLE LOOK BACK PERIODS

As mentioned previously, HUD recommends a look back period of 5 years and researchers have found that an individual that has had no re-arrest or conviction within 7 years is no more likely to commit a crime than an individual with no criminal history. Based on these suggestions, a look back period of 5-7 years would be the longest acceptable look back period. Based on the properties analyzed, most look much farther beyond this period. With the exception of Foundation Communities and a select few others, many screen since an individual was 18 for felonies and other convictions.

This practice has no real merit and should be discussed as a true barrier to finding housing, especially for individuals who have rehabilitated and paid their debts. As one individual said in public testimony for Austin's Ban the Box ordinance on employment, this type of look back period is like "I've paid back the loan but I'm still paying interest."⁷⁹ This is true of housing screening as well, individuals who have paid the fines or served time in jail or prison and are trying to find housing should not be penalized for

⁷⁹ Kamp, Amy. "Austin First Fair Chance City in the South: Ban the Box Ordinance Passes the Council." *The Austin Chronicle*. 25 Mar. 2016. Web. 28 Mar. 2016.

something so far into their past, especially when it has no indication of their ability to be a good tenant.

UNDERUSE OF MITIGATING CIRCUMSTANCES

Many of the housing providers surveyed used third party companies to carry out any criminal background screening. These companies do not give applicants a clear way to explain a conviction or appeal the process. The failure to consider mitigating circumstances could be an unnecessary barrier to individuals attempting to secure housing.

Allowing an applicant to explain their conviction and any rehabilitation efforts would allow housing providers to judge applicants on an individual basis instead of relying on a predetermined formula that is sent to these large screening companies.

Housing providers should provide a clear means for applicants to write down any mitigating circumstances. In addition, providing examples of mitigating circumstances, such as drug rehabilitation programs, can help applicants determine the best way to show good tenancy and allow for clear communication on what the housing provider is looking for.

EQUATING ARRESTS WITH CONVICTIONS

A third party screening process could have inaccuracies in it if it screens based on arrest records or expunged convictions, something that would easily be explained by the

applicant, but is not possible with this process.⁸⁰ The lack of communication between these screening companies and applicants could even be going against the policy created by the housing provider, but it is very common nonetheless in these third party screenings.

Of the housing providers surveyed, some explicitly stated that they used arrest records in some cases. For example, text from one policy reads, “Depending on the severity of the offense, an arrest record may be considered sufficient evidence of prohibited criminal activity for a denial of housing.”⁸¹

An appeals process needs to be available in order for applicants to correct any incorrect information that may have been used in the screening process. These methods will allow for a greater level of transparency and for screening to happen on an individual level. Arrest records show no proof of conviction and should not be used for denial of housing.

OVERBROAD CATEGORIES OF CRIMINAL ACTIVITIES

For PHAs, HUD has delineated three areas where these housing providers have discretion to screen applicants: *drug-related criminal activity*, *violent criminal activity*,

⁸⁰ Oyama, Rebecca. "Do Not (Re)Enter: The Rise of Criminal Background Tenant Screening as a Violation of the Fair Housing Act." *Michigan Journal of Race and Law* 15.1 (2010): 187. *ProQuest*. Web. 10 Mar. 2016.

⁸¹ Garden Terrace. *Criminal History Criteria*. Publication. 2015. Print.

*and criminal activity that pose a threat to the health, safety, and welfare of other residents.*⁸²

The housing providers surveyed in Austin appear to follow a similar structure in their screening process. Often, drug related criminal activity was screened as well as broad categorizations of felonies. These broad categories may be screening out people whose criminal history has no effect on their ability to be good tenants by arbitrarily denying individuals housing without taking the specific crime into consideration.

Housing providers should reevaluate their screening process to ensure that the activities they are screening for are true predictors on an applicant's ability to be a good tenant. Good tenancy can be defined through being respectful of property and other residents.

ACCEPTANCE

In January of 2016 the state of Texas put into effect HB 1510 limiting the liability that landlords have when they rent to individuals with a criminal record.⁸³ This bill allows for housing providers to decrease their reliance on criminal background screenings to determine good tenancy by limiting their risk of lawsuit. Until this point, landlords had increased responsibility for what happened on their property that made criminal background screenings a hopeful way to rule out this happening. However, research has

⁸² Tran-Leung, Marie Claire. *When Discretion Means Denial: A National Perspective on Criminal Records, Barriers to Federally Subsidized Housing*. Rep. Sargent Shriver National Center on Poverty Law, Feb.2015. Page VII. Web. 10 Nov. 2015.

⁸³Thompson, Senfronia, House Bill 1510, 84th Legislature, Regular Session (2015), Texas Legislature.

shown that individuals with a criminal background who have housing are at reduced risk of reentering the criminal justice system.⁸⁴

This new bill is helpful in making the case that criminal background screening should be regulated by the city in affordable properties. Housing providers can no longer claim that they will be liable for the behavior of residents with criminal histories and may be more open to loosening these restrictions, especially based on these best practices. In addition, it shows momentum within the state that could indicate an overall acceptance of decreasing the use of criminal background screening for housing providers, all indicating a certain level of feasibility.

⁸⁴ Smith, Douglas. *Legally Protect Landlords Who Provide Housing to People with Criminal Records*. Texas Criminal Justice Coalition. Web. 16 March 2016.

Chapter 6: Practices in other Localities

As the conversation regarding criminal background screening as a barrier to housing in the United States increases, many localities now offer strong protections for their residents who have a history with the criminal justice system. Many of these policies target all housing providers, not just those that provide affordable housing through local interventions. Of these, Madison and Dane County Wisconsin offer some of the best practices.

MADISON

The City of Madison, surrounding Dane County, and nearby city of Appleton Wisconsin have gone the furthest in ensuring that involvement with the criminal justice system has a minimal effect on access to housing. Since 1999, these areas have included arrest records and convictions in their large list of 23 protected classes for housing and employment discrimination protections. However, these protected classes do allow for some limitations and give housing providers some discretion.

For example, conviction records that directly relate to housing are not protected under this ordinance. These “circumstances of the offense that bear a substantial relationship to tenancy” include convictions of:

- Two or more misdemeanor drug-related convictions related to manufacture, delivery or sale of a controlled substance or any drug-related felonious criminal activity.

- Criminal activity involving violence to a person such as murder, child abuse, sexual assault, battery, aggravated assault, assault with a deadly weapon.
- At least two or more civil ordinance violation (forfeiture) convictions within a twelve month period for violations relating to disturbance of neighbors or injury to persons or property.
- Criminal activity involving violence to or destruction of property, such as arson, vandalism, theft, burglary, criminal trespass to a dwelling.
- Disorderly conduct involving destruction of property.
- Disorderly conduct involving disturbance of neighbors.
- The landlord received written notice from the Madison Police Department that a drug nuisance under Sec. 823.112, Wix. Stats. Exists.

These offenses that relate directly to tenancy as described by the City of Madison must also be looked at along with an interview about the offense. This is required in order for the housing provider to establish a “substantial relationship.”⁸⁵

This ordinance also supplies housing providers with appropriate look back periods that can be used when looking at convictions that are do not bear a substantial relationship to tenancy. Two years since applicant was placed on probation, released

⁸⁵ *Arrest and Conviction Record and Housing Discrimination in the City of Madison*. Tech. City of Madison Department of Civil Rights Equal Opportunities Division, 26 Apr. 2011. Web. 18 Mar. 2016.

from incarceration, or paid their fine is the maximum period that housing providers can use a conviction to deny tenancy.

The ordinance also protects individuals against the use of arrest records to deny housing. Being questioned, apprehended, held for investigation, taken into custody or detention, or charged without conviction cannot be used as screening criteria.⁸⁶

This is one of the most liberal policies in the nation and helps private housing providers within the city of Madison to manage the way they use criminal backgrounds to prove good tenancy. However, these practices are not without continuous debate. State law has continuously attempted to allow landlords more discretion when leasing housing to tenants with criminal history and these localities must continue to fight to protect their ordinances.⁸⁷

SEATTLE

Other cities are beginning to look at the importance of these protections for their residents. The City of Seattle has begun to attempt to protect these individuals and has created a framework for doing so.

Seattle's Mayor Edward B. Murray's vision is for a "Safe, Connected, Affordable City."⁸⁸ This goal encompasses many aspects of city life, but the one facing the most difficulty is housing. Similarly to Austin, Seattle's population and economy are growing

⁸⁶ Timian, Alex. *Housing Discrimination in the City of Madison, WI*. Issue brief. City of Madison. Web. 17 Mar. 2016.

⁸⁷ Siegel, Ben. "New Wisconsin Landlord Laws Wipe out Hard-fought Victories for Madison Renters." *Isthmus*. 1 Nov. 2013. Web. 17 Mar. 2016.

⁸⁸ "My Vision for Seattle." *Office of the Mayor*. City of Seattle, n.d. Web. 17 Mar. 2016.

rapidly, creating a lack of affordable housing opportunities for its residents. In a 2015 document by the Office of the Mayor, *Seattle Housing Affordability and Livability Agenda*, created to provide recommendations for the mayor and City Council, housing was a main issue addressed in order to facilitate livability in the city. Specifically, Strategies T.1 and T.3 looked to support vulnerable tenants and increase housing availability for those with criminal records:⁸⁹

More Supports for Communities: Support Vulnerable Tenants and Increase Access to Housing

- ***Strategy T.1-*** Increase fair access to rental housing for people with past criminal records through local legislation, education, and technical assistance.
- ***Strategy T.3-*** Provide funding for tenant counseling and landlord education to combat displacement and increase access to housing

The recommendations aim at providing fair access to those with criminal records while balancing the interests of property owners. A list of recommendations was created in order to facilitate this balance and integration into city policy.

Integrating local legislation, education, technical assistance, and fair housing enforcement are the key aspects of these recommendations. Topping the list were prohibiting advertisements that explicitly deny individuals with criminal records, as well

⁸⁹ *Seattle Housing Affordability and Livability Agenda*. Rep. HALA Advisory Committee, 13 July 2015. Page 33. Web. 18 Mar. 2016.

as screening criteria that automatically denies or has look back periods exceeding 7 years. Educational recommendations include informing communities on the importance of reduced barriers to housing and providing housing providers with key recommendations on how tenant screening should be conducted.

Seattle Mayor Murray created a Fair Chance Housing Committee in January of 2016 in order to review the recommendations created by the advisory committee and delineate how to integrate them into city policy. Although this is currently in process, it will be a good thing to watch as Austin moves forward in realizing its own goals to reduce barriers to housing for those with criminal backgrounds.

OVERVIEW

Many cities across the country are increasing protection for their residents with involvement in the criminal justice system. As national attention on the large number of incarcerated individuals continues to elevate and an increasing focus is put on criminal background screening in employment, these practices will undoubtedly become increasingly popular. Although they face opposition, similar to the case in Madison, protecting residents and allowing for housing choice within communities is important. The City of Austin can learn from these initiatives taking place across the country.

Chapter 7: Conclusion and Recommendations

There are two types of barriers that limit individuals with involvement in the criminal justice system from finding housing. The first affects those that have recent convictions and have not fully rehabilitated, but require housing before other needs can be addressed. In Austin, this group is able to utilize Permanent Supportive Housing units and Housing First opportunities. There are many organizations working on connecting individuals with these resources and a lot of momentum surrounding this approach from the Mayor and City Council.

The other group of individuals are those that have fully rehabilitated but find that their past involvement with the criminal justice system is still a barrier to securing a place to live. Some housing providers within the city have reduced these barriers by having criminal background checks with limited look back periods, but there are still many housing providers that screen out these applicants.

In order to affect change at a large scale, the city should take some control over the screening process that takes place at properties using city incentives to develop affordable housing units. Criminal background screening currently takes place in 99% of the 33 developments used in this research. Much of this screening is limiting applicants from living in these affordable housing units that have been created to provide housing choice to all residents of Austin. By creating policies limiting look back periods, using mitigating circumstances, limiting the categories that can be screened for, and not allowing arrests to be equated with convictions, the city can help these properties create a

criminal background screening process that is based on actions that prove good tenancy instead of preconceived stereotypes regarding individuals with criminal histories.

RECOMMENDATIONS

1. Create a series of regulations on look back periods for all types of criminal history. Seven years is an appropriate place to begin as being the longest amount of time, but shorter time frames need to be considered depending on the severity of the offense.
2. The use of arrest records to screen for criminal activity is not a true indication of conviction. This practice must be eliminated for all types of criminal activity.
3. Using advertisements that explicitly deny persons with criminal records from housing should be eliminated. Similar to ‘Ban the Box’, if criminal background screening is to be done it should wait until later in the application process.
4. Third party criminal background screening companies create a set of unnecessary barriers to housing applicants in both affordable and market rate housing across the city. Although it may not be possible to ban the use of these companies, tighter regulations on their screening processes need to be in effect. They should not screen for arrest records, they must provide a detailed report of their findings to applicants, and they need to have a simple way available for applicants to counter their findings and clear up any mistakes that may have happened. A citywide ordinance requiring these changes would force third party screening companies to update their practices. This would not

only have an effect on affordable housing units, but would make the criminal background screening process more transparent for all rental-housing units in Austin.

Of the 33 developments included in this research, changing these practices would have the ability to open up at minimum 249 for individuals who were previously being screened out for unreasonable look back periods. Additionally, changes could affect even more units across the city and allow for people with criminal histories the ability to fairly find affordable housing in the neighborhood of their choice.

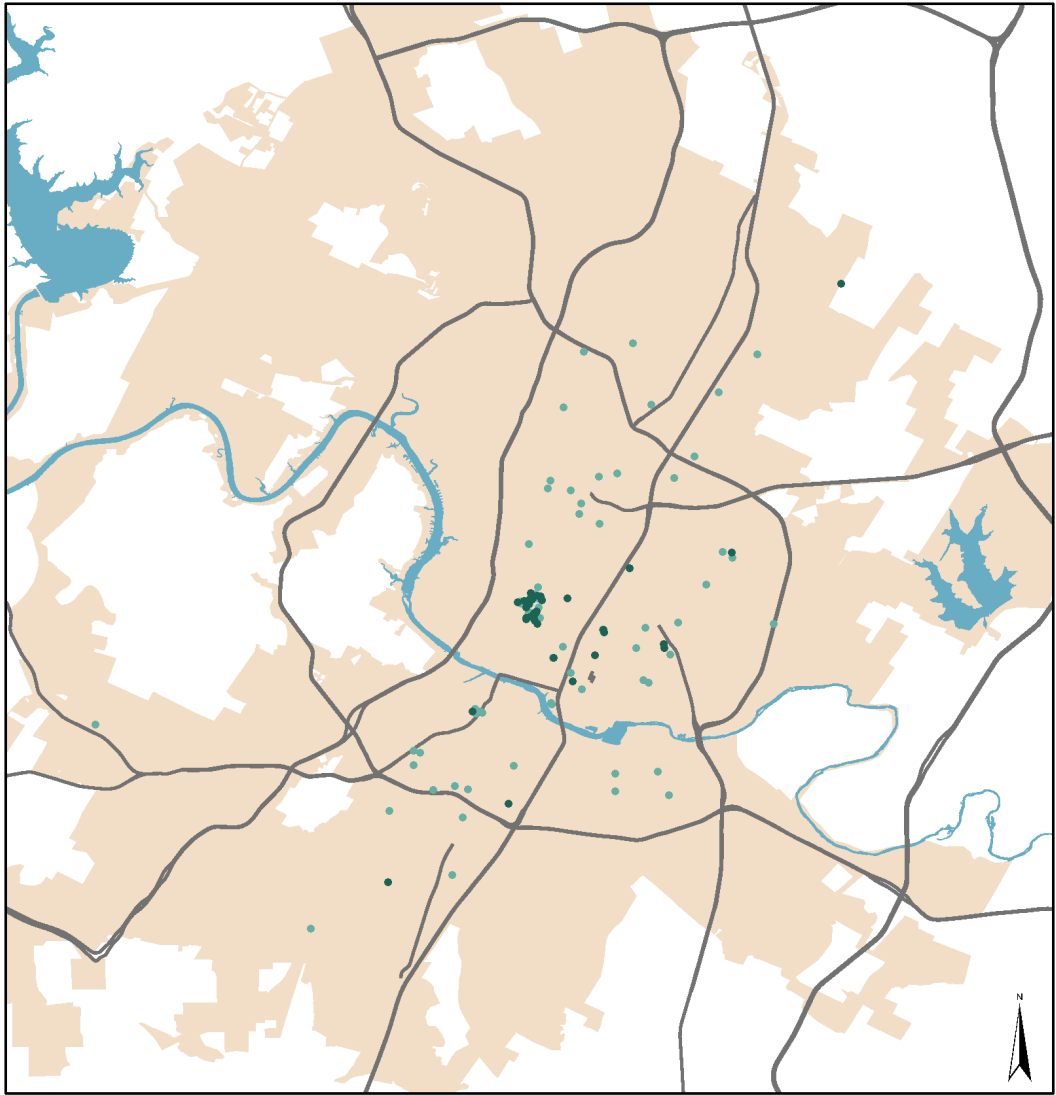
The purpose of this Professional Report has been to inform the reader of national best practices of criminal background screening and provide guidance on how these can be implemented in Austin. City incentivized affordable housing units are the easiest target seen by Reentry Roundtable in beginning to limit these restrictions, but I hope that the efforts done in this small pool of housing providers could begin to trickle into more developments across the city. The use of criminal background screenings to bar individuals from housing is a tactic based on lack of education and fear of potential repercussions of housing an individual with a criminal record, something that will take time to change, but can have a lasting impact.

Appendices

Development	Units	Development	Units	Development	Units	Development	Units	Development	Units
Riverchase Apartments	284	Heritage Oak Hill	96	The Enclave	30	Regents at 26th	14	Texan at Pearl	8
Blunn Creek Apartments	274	Wilshire West (Princeton Apts.)	84	Post S Lamar	30	Grand Marc at 26th	14	Texas Shoal Creek	8
Woodland Heights Apartments	251	The Willows	64	Austin Childrens Shelter	28	Block at Leon	13	Jefferson West Campus	8
Fort Branch Landing	250	Oak Springs Villas	56	The Villages on 12th	28	Lifeworks	12	Vintage (22nd 1/2)	7
Retreat at North Village	240	Waller Creek Apartments on 51st	56	Crest at Pearl	28	Manor House	11	Texan Tower	7
Riverside Meadows Apartments	237	Lyons Gardens	53	21 Pearl	28	Allandale Condos	10	Longhorn Lux	7
The Paddock at Norwood	228	The Super Co-op	50	Anderson Village	24	CWS Block at 28th	10	2009 Salina Street	6
Harris Branch Senior Apartments	216	Meadowood Apartments	48	Austin Travis County MHMR	24	Quarters at Grayson;	10	The Boulevard	6
Palms at North Lamar	215	Rutland Place Apartments	48	Quarters at Nueces	23	Quarters at Sterling	10	Texan West Campus	6
Village Green Apartments	200	Treaty Oaks	47	Franklin Gardens	22	Ardent Residential	10	Quarters at Cameron	6
Wildflower Terrace	171	Pecan Springs Commons	46	La Vista de Guadalupe	22	Gibson Residences	10	CWS Block Pearl North	5
Southwest Trails Apartments	160	The Works at Pleasant Valley	45	The District at SoCO	22	Legacy at The Lake	9	CWS Block Pearl South	5
Sierra Vista	143	Legacy Apartments	40	Calloway House	22	CWS Block on 23rd	9	Galileo (Cambridge)	5
M Station	140	The 704	38	Benjamin Todd Apartments	21	CWS Block on 25th (East)	9	Villas on 26th	5
Spring Terrace Apartments	140	Austin Travis County MHMR	37	Texan 26th	21	CWS Block on Rio Grande	9	East 4th Street Apartments	3
Capital Studios	135	Jefferson at 26th	36	Skyhouse	16	Regents at 24th	9	St. James Apartments	2
Elm Ridge Apartments	130	Corazon	35	21 Rio	16	Quarters at Montgomery	9	Ellora	2
Stony Creek Apartments	124	Axis West campus	34	Quarters at Bandera	16	5350 Amli	9	Uptown Lofts	2
Arbor Terrace	120	Oak Meadows	34	Garden Terrace Apartments	15	1803 E 20th Street	8	2608 Salado	1
Skyline Terrace	100	Woolridge Hall	31	Guadalupe Court Apartments	15	The Ivy	8	San Pedro Flats	1
Marshall Apartments	100	Camden Lamar Heights	31	Crossroads Apartments	14	CWS Block on 25th (West);	8	University Garden (Karnes)	1

APPENDIX 1: TABLE OF AFFORDABLE HOUSING UNITS PRODUCED THROUGH CITY PROGRAMS AS OF 2015

Current Affordable Housing Inventory in Austin with more than 4 Units



Legend

- Included in Analysis
- Not Included in Analysis
- Major Roads
- Lakes
- City of Austin, Texas

APPENDIX 2: MAP OF AFFORDABLE HOUSING UNITS PRODUCED THROUGH CITY PROGRAMS AS OF 2015

Interview Guide:

1. What is the current criminal background screening process done at this facility?
 - a. What types of criminal backgrounds are being looked at?
 - b. What is the look back period for this process?
 - c. Is a third party utilized to conduct the screening?
2. Does this process happen via a paper/online application or in person?
 - a. If this is via an application, is there space for applicants to give an explanation for past criminal history?
 - b. Has this process changed recently or has it been constant?
3. Is this process the same for both affordable and market rate units (if applicable)?

APPENDIX 3: SCRIPT USED FOR OBTAINING INFORMATION ON CRIMINAL BACKGROUND SCREENING AT AFFORDABLE HOUSING DEVELOPMENTS

Property ID:	Background Screening?	Look back Period Defined?	Screening for Felonies	Screening for Misdemeanors	3rd party?
1	✓	✓	✓		
2	✓	✓	✓	✓	
3	✓	✓	✓		
4	no				
5	no				
6	✓	18 years old	✓		
7	✓				
8	✓				
9	✓	✓	✓		
10	✓	✓	✓	✓	
11	✓			✓	
12	✓	✓	✓	✓	
13	✓				
14	✓	18 years old	✓		✓
15	✓	18 years old	✓		✓
16	✓	18 years old	✓		✓
17	✓	18 years old	✓		✓
18	✓	18 years old	✓		✓
19	✓	18 years old	✓		✓
20	✓	18 years old	✓		✓
21	✓	18 years old	✓		✓
22	✓	18 years old	✓		✓
23	✓	18 years old	✓		✓
24	✓	18 years old	✓	✓	✓
25	✓	18 years old	✓	✓	✓
26	✓	18 years old	✓		✓
27	✓	18 years old	✓		✓
28	✓	18 years old	✓		✓
29	✓	18 years old	✓	✓	✓
30	✓	18 years old	✓		✓
31	✓	no	✓		
32	✓	18 years old	✓	✓	✓
33	✓	18 years old	✓		✓

APPENDIX 4: TABLE OF FINDINGS

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